



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of Claims Against the Dealer Bond  
of Kingsley Auto Group, LLC, d/b/a Budget  
Country Auto

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Case Nos: DOT-15-0026 and  
DOT-15-0028

**FINAL DECISION**

Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in the Daily Citizen, a newspaper published in Beaver Dam, Wisconsin. The notice informed persons who may have claims against the motor vehicle dealer bond of Kingsley Auto Group, LLC, d/b/a Budget Country Auto, (Dealer) to file them with the Wisconsin Department of Transportation (Department) by July 3, 2015. On March 2, 2015, Rosenda Naef filed a claim with the Department against the motor vehicle dealer bond of the Dealer. And, on April 27, 2015, Shirley Schultz filed a claim with the Department against the motor vehicle dealer bond of the Dealer. The claims were forwarded by the Department to the Division of Hearings and Appeals. This Preliminary Determination is based on the documents in the file and constitutes the preliminary determination required by Wis. Admin. Code § Trans 140.26(4)(a).

On November 25, 2015, a Preliminary Determination pursuant to Wis. Admin. Code § Trans 140.26(5)(a), was issued in this matter. Rosenda Naef filed an objection to the Preliminary Determination. In response to the objection, an evidentiary hearing was scheduled to be conducted in Madison, Wisconsin, on January 22, 2016, before Mark F. Kaiser, Administrative Law Judge.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Rosenda Naef  
4201 South Decatur Boulevard, Apt. 1006  
Las Vegas, NV 89103

Shirley Schultz  
500 4<sup>th</sup> Street  
Beaver Dam, WI 53916

Kingsley Auto Group, LLC, d/b/a Budget Country Auto, by

Robert Kingsley  
4121 County Road V  
DeForest, WI 53532

Western Surety Company  
PO Box 5077  
Sioux Falls, SD 57117

Auto-Owners Insurance Company  
P.O. Box 30660  
Lansing, Michigan 48909-8160

No one appeared at the scheduled hearing. The Preliminary Determination approved Shirley Schultz's claim against the surety bond of the Dealer, but denied Rosenda Naef's claim because of a lack of documentation of the amount of her loss. Ms. Naef's claim was also problematic because in the complaint she filed with the Department, Naef stated she purchased the vehicle in October of 2013. No exact date was given for the transaction. Effective October 19, 2013, the Dealer switched its surety bond from Auto Owners Insurance Company to Western Surety Company. Thus the date in October of 2013 that Naef's claim arose would control which bond would be liable for her claim. Prior to the hearing, Ms. Naef submitted the purchase contract for the vehicle she purchased from the Dealer. The purchase contract sufficiently documents her loss and that the transaction occurred on October 2, 2013. The final decision is amended to also allow Rosenda Naef's claim. Except for this amendment, the Preliminary Determination is adopted as the Final Decision in this matter.

#### Findings of Fact

1. Kingsley Auto Group, LLC, d/b/a Budget Country Auto, (Dealer) was licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities were located at 301 South Spring Street, Beaver Dam, Wisconsin. The Dealer was placed out of business effective November 17, 2014.

2. The Dealer had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) from December 13, 2012, until it was cancelled effective October 19, 2013 (Bond # 66149575 from Auto Owners Insurance Company). The Dealer obtained a new continuous bond with a beginning date of October 19, 2013 (Bond # 61866232 from Western Surety Company). Bond # 61866232 was cancelled effective October 19, 2014.

Naef Claim (DOT-15-0026)

3. On October 2, 2013, Rosenda Naef (Naef) purchased a 1998 BMW 540i automobile, vehicle identification number WBADE532WBV93233, from the Dealer. According to the purchase contract, Naef paid \$4,500.00, plus \$421.50 for sales tax and license and registration fees, for the vehicle.

4. Naef did not receive a title or registration for the vehicle. On June 6, 2014, Naef filed a complaint with the Department's Dealer Section against the Dealer. The investigator assigned to the complaint attempted to contact Robert Kingsley, the owner/manager of the dealership, but was unsuccessful.

5. The investigator was unable to resolve the complaint and on March 2, 2015, Naef filed a claim against the surety bond of the Dealer. The claim is in the amount of \$4500, the purchase price of the automobile excluding taxes and registration fees.

6. Wis. Stat. § 342.16(1), requires motor vehicle dealers to submit applications for titles and registrations to the Department's Division of Motor Vehicles within seven business days of the sale of the vehicle to a retail customer. The Dealer violated this regulation. As a result of the Dealer's violation of Wis. Stat. § 342.16(1), Naef has not received a title or registration for the vehicle she purchased and, therefore, is unable to lawfully operate or sell the vehicle. Naef sustained a loss of as a result of the Dealer's violation of Wis. Stat. § 342.16(1). A violation of Wis. Stat. § 342.16(1) is, in turn, a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles).

7. Naef filed a bond claim within three years of the ending date of the period the Auto Owners Insurance Company bond was in effect and it is, therefore, a timely claim.

8. Naef sustained a loss as a result of the Dealer's violation of Wis. Stat. § 342.16(1). Naef submitted documentation to support a claim in the amount of \$4,921.50, the purchase price, including sales tax and license and registration fees. Because she is unable to lawfully operate or sell the vehicle, Naef is entitled to a refund of the amount she paid for the vehicle.

Schultz Claim (DOT-15-0028)

9. On May 13, 2014, Shirley Schultz (Schultz) purchased a 2001 Ford Windstar minivan, vehicle identification number 2FMZA51471BB76803, from the Dealer. According to the purchase contract, Schultz paid \$2,554.95, including sales tax and license and registration fees, for the vehicle.

10. Schultz did not receive a title or registration for the vehicle. On November 10, 2014, Schultz filed a complaint with the Department's Dealer Section against the Dealer. The investigator assigned to the complaint attempted to contact Robert Kingsley, the owner/manager of the dealership, but was unsuccessful.

11. The investigator was unable to resolve the complaint and on April 27, 2015, Schultz filed a claim against the surety bond of the Dealer. The claim is for the purchase price of the vehicle including taxes and registration fees.

12. Wis. Stat. § 342.16(1), requires motor vehicle dealers to submit applications for titles and registrations to the Department's Division of Motor Vehicles within seven business days of the sale of the vehicle to a retail customer. The Dealer violated this regulation. As a result of the Dealer's violation of Wis. Stat. § 342.16(1), Schultz has not received a title or registration for the vehicle she purchased and; therefore, is unable to lawfully operate or sell the vehicle. Schultz sustained a loss of as a result of the Dealer's violation of Wis. Stat. § 342.16(1). A violation of Wis. Stat. § 342.16(1) is, in turn, a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles).

13. Schultz filed a bond claim within three years of the ending date of the period the Western Surety Company bond was in effect and it is, therefore, a timely claim.

14. Schultz sustained a loss of as a result of the Dealer's violation of Wis. Stat. § 342.16(1). The loss sustained by Schultz was caused by an act of the Dealer that would be grounds for the suspension or revocation of his motor vehicle dealer license. Accordingly, the claim is allowable. Schultz submitted documentation to support a claim in the amount of \$2,554.95, the purchase price, including sales tax and license and registration fees. Because she is unable to lawfully operate or sell the vehicle, Schultz is entitled to a refund of the amount she paid for the vehicle.

## DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.0116 (1) (a) to (gm), (im) 2., (j), (jm), (k), (m) or (n) to (p), Stats.

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claims filed against the security bond of the Dealer, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. With respect to the claims filed by Naef and Schultz, the Dealer violated Wis. Stat. § 342.16(1). A violation of Wis. Stat. § 342.16(1), in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles). Wis. Stat. § 218.0116(1)(gm) is identified in Wis. Admin. Code § Trans 140.21(1)(c)1 as one of the violations upon which a claim against a motor vehicle dealer's bond can be based. Naef and Schultz each sustained a loss as a result of the violation.

#### CONCLUSIONS OF LAW

1. Rosenda Naef's claim arose on October 2, 2013, the date she purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Auto Owners Insurance Company covers a period from December 13, 2012, until it was cancelled effective October 19, 2013. The claim arose during the period covered by the surety bond.

2. On March 2, 2015, Rosenda Naef filed a claim against the motor vehicle dealer bond of the Dealer. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d) the claim is timely.

3. Rosenda Naef's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of his motor vehicle dealer license. Rosenda Naef has submitted documentation to support a claim in the amount of \$4,921.50. Pursuant to Wis. Admin. Code § 140.21(1)(c), the claim is allowable.

4. Shirley Schultz's claim arose on May 13, 2014, the date she purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Western Surety Company covers a one-year period commencing on October 19, 2013. The claim arose during the period covered by the surety bond.

5. On April 27, 2015, Shirley Schultz filed a claim against the motor vehicle dealer bond of the Dealer. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d) the claim is timely.

6. Shirley Schultz's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of his motor vehicle dealer license. Shirley Schultz has submitted documentation to support a claim in the amount of \$2,554.95. Pursuant to Wis. Admin. Code § 140.21(1)(c), the claim is allowable.

7. The Division of Hearings and Appeals has authority to issue the following orders.

#### PRELIMINARY ORDERS

1. The claim filed by Rosenda Naef against the motor vehicle dealer bond of Kingsley Auto Group, LLC, d/b/a Budget Country Auto, is APPROVED in the amount of \$4,921.50. Auto Owners Insurance Company shall pay Rosenda Naef this amount for her loss attributable to the actions of Kingsley Auto Group, LLC, d/b/a Budget Country Auto. Upon receipt of the payment, Rosenda Naef shall surrender possession of the vehicle to Auto Owners Insurance Company.

2. The claim filed by Shirley Schultz against the motor vehicle dealer bond of Kingsley Auto Group, LLC, d/b/a Budget Country Auto, is APPROVED in the amount of \$2,554.95. Western Surety Company shall pay Shirley Schultz this amount for her loss attributable to the actions of Kingsley Auto Group, LLC, d/b/a Budget Country Auto. Upon receipt of the payment, Shirley Schultz shall surrender possession of the vehicle to Western Surety Company.

Dated at Madison, Wisconsin on January 25, 2016.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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Madison, Wisconsin 53705-5400  
Telephone: (608) 266-7709  
FAX: (608) 264-9885

By: \_\_\_\_\_  
Mark F. Kaiser  
Administrative Law Judge

## NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel  
4802 Sheboygan Avenue, Room 115B  
Wisconsin Department of Transportation  
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.